

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON LOCAL GOVERNMENT**

**Call to Order:** By **CHAIRMAN MARK NOENNIG**, on March 22, 2001 at 3:00 P.M., in Room 472 Capitol.

#### **ROLL CALL**

##### **Members Present:**

Rep. Mark Noennig, Chairman (R)  
Rep. Rod Bitney, Vice Chairman (R)  
Rep. Jeff Mangan, Vice Chairman (D)  
Rep. Joan Andersen (R)  
Rep. Eileen Carney (D)  
Rep. Larry Cyr (D)  
Rep. John Esp (R)  
Rep. Dennis Himmelberger (R)  
Rep. Hal Jacobson (D)  
Rep. Rick Laible (R)  
Rep. Jesse Laslovich (D)  
Rep. Bob Lawson (R)  
Rep. Michelle Lee (D)  
Rep. Brad Newman (D)  
Rep. Ken Peterson (R)  
Rep. William Price (R)  
Rep. Cindy Younkin (R)

**Members Excused:** Rep. James Whitaker (R)

**Members Absent:** None.

**Staff Present:** Eddye McClure, Legislative Branch  
Pati O'Reilly, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

##### **Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 429; SB 359; SB 241;  
3/19/01  
Executive Action: SB 198; SB 427; SB 359

**HEARING ON SB 429**

**Sponsor:** Senator Mike Sprague, SD 6

**Proponents:** Chris Gallus, Billings Chamber of Commerce  
Clayton Fiscus, Real Estate Agent  
Roger Halver, MT. Association of Realtors  
Don Allen, Western Environmental Trade Assn.  
Webb Brown, MT Chamber of Commerce  
Mary Wittinghill, Montana Tax Payers Association  
Wilford Ebert, Billings, signature gatherer  
Phillip Lupo, Billings, signature gatherer  
David Brown, Billings Realtor

**Opponents:** Chuck Tooley, Mayor of Billings, MT  
Brent Brooks, Billings City Attorney  
Duane Winslow, Yellowstone County Election Clerk  
Susan Deschamp, Ex. Director, Community 7 of Billings  
Jack Johnson, Billings City Council

**Opening Statement by Sponsor:** Senator Mike Sprague introduced SB 429. This legislation evolved from the City of Billings taxing utilities and utility right-of-ways based on the amount of revenue generated. The citizens organized a petition drive to stop the city resolution. The question as to what day date starts the 21 day time period, is the time frame different for the various types of local government? We have a retroactive date on this bill, which we believe would solve the Billings situation. **EXHIBIT(loh65a01)EXHIBIT(loh65a02){Tape : 1; Side : A; Approx. Time Counter : 0 - 10.2}**

**Proponents' Testimony:** Chris Gallus, Billing Chamber of Commerce. We support this legislation because it cleans up the statutes on petition drives. **{Tape : 1; Side : A; Approx. Time Counter : 10.2 - 18.1}**

**Clayton Fiscus, Billings Real Estate Agent.** I support this legislation as it would make the signature gathering easier and would hopefully eliminate a 19 day delay in approving a one page document. This was unreasonable and the actual dates need to be set in statute. **EXHIBIT(loh65a03)EXHIBIT(loh65a04){Tape : 1; Side : A; Approx. Time Counter : 18.1 - 21.9}**

**David Brown, Billings Realtors,** I was involved in the petition drive and several people told me they could not afford a tax increase and they wanted the right to vote on all increases. **{Tape : 1; Side : A; Approx. Time Counter : 21.9 - 23.9}**

**Phillip Lupo, taxpayer and signature gatherer.** I support this legislation and feel the approval delay was unfair. {Tape : 1; Side : A; Approx. Time Counter : 23.9 - 25.5}

**Wilfred Ebert, signature gatherer,** I support this bill. The manner in which this resolution was passed in unjust. {Tape : 1; Side : A; Approx. Time Counter : 25.5 - 26.9}

**Mary Wittinghill, Montana Tax Payers Assn.** We strongly urge your support of this bill. We feel that local support means exactly that local control with the citizens having the right to vote. {Tape : 1; Side : A; Approx. Time Counter : 26.9 - 27.6}

**Webb Brown, MT Chamber of Commerce.** We feel the citizens should have adequate time to gather signatures. {Tape : 1; Side : A; Approx. Time Counter : 27.6 - 27.9}

**Don Allen, WETA,** We support the bill. {Tape : 1; Side : A; Approx. Time Counter : 27.9 - 28.8}

**Roger Halvor, MT Association of Realtors,** We support SB 429. {Tape : 1; Side : A; Approx. Time Counter : 28.8 - 29.8}

**Opponents' Testimony: Chuck Tooley, Mayor of Billings, MT.** This bill directly affects the City of Billings. The resolution referred to addresses the correct management of right-of-ways. The utility companies tear up the streets, alleys and roads to install their equipment, often leaving the cities to repair the damage. These utilities must be accountable and pay a fair and reasonable rent for the use of these right-of-ways. This specific situation is already in the courts where it will be decided, therefore we do not feel we need this bill. We do not want the retroactive date because it will interfere with the court decision. {Tape : 1; Side : B; Approx. Time Counter : 0 - 3}

**Brent Brooks, City Attorney for Billings.** I vigorously oppose this legislation, especially Section 3. The signature gatherers were uninformed or did not chose to abide by the current law. {Tape : 1; Side : B; Approx. Time Counter : 3 - 7.8}

**Duane Winslow, Yellowstone County Election Clerk.** I am in an awkward position here, I oppose Section 3 of this bill, but feel statutes need to be clarified. {Tape : 1; Side : B; Approx. Time Counter : 7.8 - 13.7}

**Susan Deschamp, Ex. Dir. Of Community Seven of Billings.** We oppose this bill. {Tape : 1; Side : B; Approx. Time Counter : 13.7 - 14.9}

**Jack Johnson, Billings City Council Member:** We oppose this bill especially the retroactive date. We asked for a legal opinion regarding city tax resolutions. We passed this resolution based on that legal opinion. **{Tape : 1; Side : B; Approx. Time Counter : 14.9 - 18}**

**Informational Testimony: Linda Reed, Qwest.** We are here to answer questions and try to explain franchise fees. **{Tape : 1; Side : B; Approx. Time Counter : 18 - 19.2}**

**Questions from Committee Members and Responses: Rep. Lawson: Mayor Tooley,** Are the fees being collected at this time? **Mayor Tooley:** No.

**Rep. Esp: Mayor Tooley,** why aren't the fees being collected now? **Mayor Tooley,** for two reasons, one of the utilities did not think the city of Billings had the right to collect such fees and the other reason is that one of the utility companies has indicated they wanted to negotiate the fees. **Rep. Esp:** Do you intend to start collecting these fees before the first of the year? **Mayor Tooley:** My personal impression is that the City Council is not trying to be hard nosed about this and will wait until after the election.

**Rep. Mangan: Mayor Tooley,** Did you follow the ordinance laws in 7-5-103? **Mayor Tooley,** The City Council has discussed this situation on several occasions. **Rep. Mangan: Mayor Tooley,** did you follow the procedures required in passing this ordinance. **Mayor Tooley,** Yes. **Rep. Mangan,** Is this tax passed directly to the citizens or is it expected to be passed on by the utility company?. **Mayor Tooley,** This is a rental fee, not a tax.

**Rep. Hemmelberger** asks how the tax is calculated. **Mayor Tooley,** It will be 4 percent of gross receipts.

**Rep. Esp. Lawson, Lee, Noennig, Peterson** asked the witnesses about the cities intention to assess this fee and did the petitioners meet the requirements to place this petition on the ballot. Were the petitioners allowed a fair amount of time to complete the petitions. **{Tape : 1; Side : B; Approx. Time Counter : 19.2 - 30}** **{Tape : 2; Side : A; Approx. Time Counter : 0 - 30}** **{Tape : 2; Side : B; Approx. Time Counter : 0 - 9}**

**Closing by Sponsor: Senator Sprague** closed the bill. He answered some of the committees questions and gave a brief summary of the Billings problem. **{Tape : 2; Side : B; Approx. Time Counter : 9.2 - 12.5}**

**HEARING ON SB 359**

**Sponsor:** Sen. Halligan, SD 34

**Proponents:** Alec Hanson, MT League of Cities and Counties  
Ken Morrison, Helena City Commissioner

**Opponents:** None

**Opening Statement by Sponsor:** Senator Halligan introduced SB 359. SB 359 would allow cities and counties to supply services to out of town businesses, by negotiating a ten year contract between the parties. This contract would include a stipulation that the affected area would be annexed when the contract expired. **{Tape : 2; Side : B; Approx. Time Counter : 19.6 - 22.2}**

**Proponents' Testimony:** Alec Hanson, League of Cities and Towns. We strongly support this bill. The idea is to attempt to reduce some of the tension and border wars that occur over annexation. **{Tape : 2; Side : B; Approx. Time Counter : 22.2 - 24}**

**Ken Morrison, Helena City Commissioner.** The City of Helena requested this bill. Helena has no room for expansion, however we have two landowners who expressed interest in developing their land but are worried about a huge tax increase. This bill would allow some tax relief during the development period and then allow the city to annex the development at a mutually agreed upon date. **{Tape : 2; Side : B; Approx. Time Counter : 24 - 25.9}**

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:** Rep. Liabe: Ken Morrison, I am concerned about when the taxes are assessed. This bill calls for the taxes to begin at time of annexation. **Ken Morrison:** The intent of this bill is to make the start date for the taxes a negotiable item. The taxes could be negotiated to start any time within the ten year term of the contract or at the time of annexation.

**Rep. Esp:** Ken Morrison, Does the annexation district have to be contiguous with the city? **Ken Morrison,** No, it does not.

**Alec Hanson** explained the guidelines to be used in negotiating the contract. **Rep. Younkin** cited an actual situation and **Alec Hanson** explained how this bill would affect the Bozeman problem. **{Tape : 2; Side : B; Approx. Time Counter : 25.9 - 30} {Tape : 3; Side : A; Approx. Time Counter : 0 - 4.1}**

**Closing by Sponsor:** Sen. Halligan closed. {Tape : 3; Side : A; Approx. Time Counter : 4.1 - 6.2}

**HEARING ON SB 241**

**Sponsor:** Senator Jack Wells, SD 14

**Proponents:** Mona Jamison, Gallatin County  
Wm. Arnold, Gallatin County Planning Director  
Betty Biggs, Spring Hills Area  
John Vincent, Gallatin County Commissioner

**Opponents:** None

**Opening Statement by Sponsor:** Sen. Wells introduced SB 241 which deals with zoning districts. Currently there are two types of zoning districts. SB 241 would the regulations and allow one type zoning district. The bill would also change the structure of the zoning committee and add enforcement capabilities. {Tape : 3; Side : A; Approx. Time Counter : 6.2 - 9.9}

**Proponents' Testimony:** Mona Jamison, Gallatin County, explained the event that triggered this bill and the changes being made. **EXHIBIT** (loh65a05) {Tape : 3; Side : A; Approx. Time Counter : 9.9 - 15.8}

**Bill Arnold, Gallatin County Planning Director.** This is a simple bill that addresses the creation of zoning districts. {Tape : 3; Side : A; Approx. Time Counter : 15.8 - 19.6}

**Betty Biggs, Spring Hills Resident.** We support this bill. {Tape : 3; Side : A; Approx. Time Counter : 19.6 - 23.5}

**John Vincent, Gallatin County Commissioner,** Gallatin County requested this bill and we give it our full support. {Tape : 3; Side : A; Approx. Time Counter : 23.5 - 28.4}

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:** Rep. Lawson: Mona Jamison, what is the term lengths for zoning committee members? Bill Arnold, there are no citizens on the committee at this time. The new committee would set the length of terms. Rep. Lawson: My concern is that the county commissioners could stack the board in favor of the commissioners. Rep. Esp: Could we amend this bill to allow for citizen participation? Bill Arnold, yes, the structure

of the committee and appointing authority could be amended. {Tape : 3; Side : B; Approx. Time Counter : 0 - 7.9}

Closing by Sponsor: Sen. Wells closed and recognized that Rep. Lawson had some legitimate concerns that needs to be addressed. {Tape : 3; Side : B; Approx. Time Counter : 7.9 - 11.5}

#### EXECUTIVE ACTION ON SB 198

Motion: REP. PETERSON moved that SB 198 BE CONCURRED IN.

Motion/Vote: REP. NOENNIG moved that SB 198 BE AMENDED with AMENDMENT NO. 19801. Motion carried 12-6 with Cyr, Esp, Himmelberger, Lee, Mangan, and Newman voting no. EXHIBIT(loh65a06)

Motion: REP. PETERSON moved that SB 198 BE CONCURRED IN AS AMENDED.

Motion: REP. NOENNIG moved that SB 198 BE AMENDED with AMENDMENT #19807. EXHIBIT(loh65a07)

Motion: REP. ESP moved that AMENDMENTS #19807 segregated into No. 1 and No. 2. Vote: Motion AMENDMENTS NO. 1 carried unanimously. Vote: Motion AMENDMENT #2 failed 9-9 with Andersen, Bitney, Cyr, Laible, Lee, Noennig, Peterson, Price, and Younkin voting aye.

Motion: REP. LEE moved that SB 198 AMENDMENT # 19805 BE AMENDED. This amendment added in sidewalks.

Substitute Motion/Vote: REP. LEE made a Substitute Motion that AMENDMENT #19805 be AMENDED to remove everything after the word MAINTENANCE. Substitute motion carried 11-7 with Andersen, Bitney, Esp, Himmelberger, Laible, Peterson, and Price voting no

Motion: REP. LEE moved that HB 198 BE CONCURRED IN AS AMENDED. EXHIBIT(loh65a08)

Motion/Vote: REP. MANGAN moved that SB 198 BE AMENDED-AMENDMENT 19803. Motion carried unanimously. EXHIBIT(loh65a09)

Motion: REP. LEE moved that SB 198 BE CONCURRED IN AS AMENDED.

Substitute Motion/Vote: REP. WHITAKER made a substitute motion that SB 198 BE TABLED. Substitute motion carried 17-1 with Lawson voting no. {Tape : 3; Side : B; Approx. Time Counter : 11.5 - 30}{Tape : 4; Side : A; Approx. Time Counter : 0 - 30}

EXECUTIVE ACTION ON SB 427

Motion: REP. ESP moved that SB 427 BE CONCURRED IN.

Motion/Vote: REP. ESP moved that SB 427 BE AMENDED. Motion carried unanimously. **EXHIBIT**(loh65a10)

Motion/Vote: REP. ESP moved that SB 427 BE CONCURRED IN AS AMENDED. Motion carried unanimously. Rep. Esp to carry on the house floor.  
{Tape : 4; Side : A; Approx. Time Counter : 0 - 3.3}

EXECUTIVE ACTION ON SB 359

Motion: REP. MANGAN moved that SB 359 BE CONCURRED IN.

Motion/Vote: REP. NOENNIG moved that SB 359 BE AMENDED. Motion carried unanimously. (Conceptual)

Motion/Vote: REP. MANGAN moved that SB 357 BE CONCURRED IN AS AMENDED. Motion carried 15-3 with Andersen, Himmelberger, and Lawson voting no.

**ADJOURNMENT**

Adjournment: 6:42 A.M.

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REP. MARK NOENNIG, Chairman

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PATI O'REILLY, Secretary

MN/PO

**EXHIBIT** (loh65aad)